Supreme Court, U. S.
FILED
JUN 21 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

No. 75-1842

THE ~~PEOPLE OF THE STATE OF~~ CALIFORNIA,
Petitioner,

v.

MICHAEL KENNETH RAMEY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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printed in CALIFORNIA OFFICE OF STATE PRINTING

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75–

THE PEOPLE OF THE STATE OF CALIFORNIA,	*Petitioner,*
v.	
MICHAEL KENNETH RAMEY,	*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

The People of the State of California respectfully petition that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California entered in this case on April 26, 1976.

OPINIONS BELOW

The opinion of the Supreme Court of the State of California, filed on February 25, 1976, is printed as Appendix A hereto and is reported at 16 Cal.3d 263, 127 Cal.Rptr. 629, 545 P.2d 1333 (February 25, 1976).

The opinion of the California Court of Appeal, Third Appellate District, filed on April 30, 1975, is printed as Appendix B hereto.

JURISDICTION

The Supreme Court of the State of California originally entered judgment in this case on February 25, 1976. The timely petition for rehearing and/or modification of the opinion was filed, and on April 15, 1976, the Supreme Court of the State of California denied the petition for rehearing and/or modification. That Court issued its remittitur and the judgment became final on April 26, 1976. This petition for a writ of certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under Title 28 U.S.C. sections 1257(3) and 2101(d) and Rule 22(1), Supreme Court Rules.

QUESTIONS PRESENTED

Does the protection of the Fourth Amendment of the United States Constitution against violation of the right of the people to be secure in their persons and houses against unreasonable seizures require, in the absence of exigent circumstances, an arrest warrant to make an arrest within the home?

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent provisions of the Fourth and Fourteenth Amendments to the Constitution of the United States and article I, section 13, of the Constitution of the State of California are set forth in Appendix C hereto.

STATEMENT OF THE CASE

Petitioner seeks a writ of certiorari to have this Court review the decision of the California Supreme Court which held, *inter alia,* that warrantless arrests within the home are per se unreasonable in the absence of exigent circumstances. The decision was based upon the Fourth Amendment to the United States Constitution and article I, section 13, of the California Constitution.

Respondent was charged with possession of marijuana for sale, possession of amphetamines and possession of a sawed-off shotgun. He pleaded not guilty and moved to suppress the evidence. The motion was granted as to the shotgun, but denied as to the marijuana and amphetamines. Thereafter respondent pleaded guilty to possession of marijuana (Calif. Health and Safety Code § 11357) and the additional charges were dropped.

On appeal, respondent challenged the denial of his motion to suppress the drugs (which had been seized at his residence at the time of his arrest). The Court of Appeal of the State of California, Third Appellate District, affirmed the conviction on April 30, 1975. The Court of Appeal discussed the question of the warrantless entry to arrest but, finding exigent circumstances, declined to adopt a warrant requirement. (See opinion, App. B.)

The California Supreme Court granted a hearing on June 25, 1975. Argument was had on October 15,

1975. On February 25, 1976, that Court issued its decision reversing respondent's conviction and held that, absent exigent circumstances, an arrest warrant is required to execute an arrest within the home. The Court disagreed with the Court of Appeal and found that no exigent circumstances existed which would excuse the failure to obtain an arrest warrant. (See opinion, App. A.)

FACTUAL STATEMENT

Relying on information received from a citizen-victim informant (which the California Supreme Court found to be reliable and to constitute probable cause), police officers went to respondent's home to make an arrest for receiving stolen property (a .38 caliber pistol). The information, which included statements that there were at least three subjects at the residence and at least two loaded guns, came to the officers about three hours prior to the actual arrest.

When the officers reached the residence, they drew their weapons and knocked on the door. Respondent answered and the officer in charge identified himself and displayed his badge. At that point, respondent immediately backed into his residence and began to reach for something behind a portable bar. His arm was seized by one officer and he was handcuffed and placed under arrest. Behind the bar were found a loaded .45 caliber handgun and some illegal narcotics. Other contraband was located in plain view in the

living room area and an illegal sawed-off shotgun was seized from a back bedroom. The stolen property alleged to have been received by respondent was not found. However, he was arrested for possession of the contraband which was discovered in the residence. His motion to suppress evidence was successful as to the shotgun (*Chimel* v. *California,* 395 U.S. 752 (1969)), but the items found in the room where the arrest was actually made were not suppressed.

REASON WHY A WRIT OF CERTIORARI SHOULD BE GRANTED

The Supreme Court of the State of California has in this case interpreted the Fourth Amendment of the United States Constitution to require an arrest warrant in order to make an arrest in the home in the absence of exigent circumstances. While it cited California's constitutional counterpart of the Fourth Amendment as an additional basis for its decision, the California Supreme Court's rationale was supported almost exclusively by language in various federal and state decisions, including decisions by this Court in *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971), *Vale* v. *Louisiana,* 399 U.S. 30 (1970), *Warden* v. *Hayden,* 387 U.S. 294 (1967), and *Johnson* v. *United States,* 333 U.S. 10 (1947), which were all Fourth Amendment cases.

It is petitioner's position that the California Supreme Court has erroneously interpreted the Fourth

Amendment. In fact, this Court has never held that an arrest warrant is required in order to make an arrest based on probable cause, whether in the home or elsewhere. See *Gerstein* v. *Pugh,* 420 U.S. 103, 113 (1975). Such a requirement has been discussed by the Court, if at all, only by way of dicta. Indeed, in *Coolidge,* the case most heavily relied upon below, the dicta was only concurred in by four justices of this Court.

Petitioner respectfully urges this Court to exercise its authority as the final arbiter of federal constitutional questions. It is felt that the California Supreme Court's interpretation of the United States Constitution is contrary to the holdings of this Court. Moreover, petitioner submits that the interpretation below of article I, section 13, of the California Constitution was grounded on the California Supreme Court's erroneous view of the Fourth Amendment, since the pertinent provisions are virtually identical in the respective constitutions (see App. C) and the Court relied almost solely on Fourth Amendment cases to support its decision.

Therefore, it is petitioner's contention that an interpretation of the Fourth Amendment contrary to that given by the California Supreme Court herein would be decisive and proper in this case, since it appears that the interpretation of the federal constitutional provision was largely determinative of that given the corresponding state provision.

In addition, petitioner recognizes that the case of *United States* v. *Santana,* No. 75-19, which has been argued and is currently awaiting decision by the Court, also presents the question regarding warrantless arrests within the home. It is respectfully urged that in the interest of maintaining uniform interpretation of constitutional principles, this Court should decide the Fourth Amendment issue involved in the instant case.

* * * * *

ARGUMENT

Under the Fourth Amendment of the United States Constitution, Warrantless Arrests Within the Home Are Not per se Unreasonable in the Absence of Exigent Circumstances

This Court has held, without deviation, that probable cause is sufficient to support a felony arrest with or without a warrant. At common law and in all 50 states this has been the uniformly accepted rule, whether or not there was sufficient time to obtain a warrant. In *Carroll* v. *United States,* 267 U.S. 132, 156–157 (1975), this Court stated:

> ". . . [A] police officer may arrest without a warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and . . . he may only arrest without a warrant one guilty of a misdemeanor if committed in his presence."

Since *Carroll,* this Court repeatedly has upheld warrantless arrests on probable cause. One of those cases, *Henry* v. *United States,* 361 U.S. 98 (1959), involved 18 U.S.C. 3052, a statute authorizing agents of the Federal Bureau of Investigation to make warrantless arrests. The Court, speaking through Mr. Justice Douglas, held that the statute "states the constitutional standard" (361 U.S. at 100). In *Gerstein* v. *Pugh,* 420 U.S. 103, 113 (1975), the Court observed that probable cause arrests never have been invalidated solely because officers failed to obtain a warrant.

In light of the constitutional history and applicable precedents, petitioner submits that, as a general proposition, warrantless felony arrests on probable cause are unquestionably constitutional. See *United States* v. *Watson,* _____ U.S. _____ (1976), 44 L.W. 4112 (Jan. 26, 1976).

Nor should a different constitutional standard apply where the probable cause felony arrest takes place within a dwelling. Again, both the English common law and decisions of this Court have acknowledged the power of officers to make warrantless arrests in private places. As early as 1603, in *Semayne's Case,* 5 Co. Rep 9/a, 77 Eng. Rep. 194, the King's Bench, while recognizing that "the house of every one is to him as his . . . castle and fortress, as well for his defence against injury and violence, as for his repose. . .," concluded that his house furnished no refuge when he had committed a felony. It declared

that "[i]n all cases when the King . . . is a party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the K[ing]'s process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors. . . ."

This seems to have continued in England as the general rule. See Sheppard, *The Offices of Constables,* ch. 8, § 2, No. 4 (1650); 1 Hale, *Pleas of the Crown,* 582–583 (1847). Other commentators were of the opinion that, in the absence of fresh pursuit, a warrant should be obtained before breaking doors. See 2 Hawkins, *Pleas of the Crown,* ch. 14, § 7 (1787); Coke, *Fourth Institute of the Laws of England* 177 (1797). However, no one questioned the rule that if force were not used to enter, no warrant was necessary.

Indeed, nothing in the history of the Fourth Amendment indicates that the framers desired to upset the settled practice allowing warrantless entries to effect felony arrests.[1] In both England and the United States the rule permitting such entries has become so well settled that until recently it has received only the most casual treatment by commentators.

[1] The chief concern of the common law, as well as the framers, apparently was with searches and arrests authorized by general warrants and supported by less than probable cause. See generally, Taylor *Two Studies in Constitutional Interpretation,* 27–43 (1969).

This Court has acknowledged the validity of warrantless entries to effect probable cause arrests. Perhaps the first case presenting the question was *Johnson* v. *United States,* 333 U.S. 10 (1948). There officers entered a hotel room and arrested the occupant for drug offenses. The Court held that a warrant was required to enter the room under the circumstances of the case because, since the officers did not know the identity of the individual within, the entry could not be justified as an arrest entry. The Court indicated, however, that if the officers had known the identity of the person to be arrested, they could have entered without a warrant to make an arrest "for a crime committed in the presence of the arresting officer or for a felony of which he had reasonable cause to believe defendant guilty" (333 U.S. at 15; footnote omitted). See also *Trupiano* v. *United States,* 334 U.S. 699 (1947); *United States* v. *Rabinowitz,* 339 U.S. 56 (1950).

In *Miller* v. *United States,* 357 U.S. 301 (1958), this Court held inadmissible evidence seized in the defendant's apartment following an unannounced, warrantless breaking of the door to gain entry to arrest. However, it was indicated that, if the proper announcement had been made, the entry, arrest and seizure of evidence would have been proper. 357 U.S. at 302–308.

Ker v. *California,* 374 U.S. 23 (1963), held that the standards of conduct applicable to the federal government under the Fourth Amendment also apply

to the States under the Fourteenth Amendment. The official conduct involved in *Ker* was a warrantless entry into an apartment for the purpose of making a warrantless arrest. The Court upheld the warrantless entry. Even the dissenters contended only that the officers had not adequately announced their authority and purposes before breaking into the apartment. 374 U.S. at 47–49 (Brennan, J., dissenting in part). No justice questioned the rule that a warrantless forcible entry properly can follow such an announcement, and four justices expressly adopted that rule.

Finally, in *Sabbath* v. *United States,* 391 U.S. 585 (1968), the Court again indicated that an entry to make an arrest on probable cause is reasonable under the Fourth Amendment if preceded by the proper announcement and demand. It wrote: "This Court has held . . . that the validity of an entry of a federal officer to effect an arrest without a warrant 'must be tested by criteria identical with those embodied in' [18 U.S.C. 3109]" (391 U.S. at 588, footnote omitted, quoting from *Miller, supra,* 357 U.S. at 306). Section 3109 authorizes forcible entry after notice of authority and demand to enter. Although the Court held that an unannounced entry through an unlocked but closed door did not meet with criteria of section 3109, the proposition that the arrest entry would have been upheld if the requirement of announcement had been observed is implicit in its decision.

Although none of these cases expressly holds that warrantless arrest entries are presumptively reasonable within the meaning of the Fourth Amendment, all of them appear to accept the common law rule as so much a part of our jurisprudence that it could be acknowledged without the need for a formal holding. There was little need to endorse the rule simply because defendants in criminal cases did not challenge it.

Apparently no cases decided by this Court have supported a contrary conclusion, although doubts have, on occasion, been expressed. In *Jones* v. *United States,* 357 U.S. 493, 499–500 (1958), the Court's holding enabled it to avoid "a grave constitutional question, namely, whether the forceful nighttime entry into a dwelling to arrest a person reasonably believed within, upon probable cause that he had committed a felony, under circumstances where no reason appears why an arrest warrant could not have been sought, is consistent with the Fourth Amendment." Such dicta, however, is not apropos to the instant case, since the entry herein was neither forceful nor at night.

Four justices reasoned in *Coolidge* v. *New Hampshire, supra,* 403 U.S. at 476–481, that "[i]t is clear . . . that the motion that the warrantless entry of a man's house in order to arrest him on probable cause is *per se* legitimate is in fundamental conflict with the basis principle of Fourth Amendment law that searches and seizures inside a man's house without a warrant are *per se* unreasonable in the absence of

some one of a number of well defined 'exigent circumstances' " (403 U.S. at 477–478). However, the plurality in *Coolidge* found it unnecessary to resolve this conflict and the common law rule stands today.[2]

There is no persuasive reason to abandon the settled practice of allowing warrantless felony arrests which has been followed by courts and legislatures for centuries. Though history and *stare decisis* are important factors to be considered in this regard, they are not the sole support of petitioner's position. The American Law Institute's recently completed study of prearraignment procedures concluded that officers should continue to be empowered to make warrantless arrest entries. American Law Institute, *A Model Code of Pre-Arraignment Procedure,* § 120.6(1) (Official Draft 1972). The traditional rule would only be changed to the extent of establishing a presumptive need for a warrant to make an arrest in the night-

[2] The plurality in *Coolidge* believed that "[t]he case of *Warden* v. *Hayden,* [387 U.S. 294 (1967)], where the Court elaborated a 'hot pursuit' justification for the police entry into defendant's house without a warrant for his arrest, certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent circumstances." 403 U.S. at 480–481. We respectfully disagree with this analysis. *Hayden* used the "hot pursuit" justification both to justify the entry to make an arrest and to justify the thorough search of the house in which the suspect was hiding. The officers searched, for example, the contents of a washing machine. Whether or not the officers were at liberty to enter to make the arrest, the "hot pursuit" justification would have been necessary to support the extensive search. Moreover, we do not believe that a rule so long established in Anglo-American law can be rejected by "negative implication." Nor has the Court interpreted *Hayden* in the fashion suggested by the *Coolidge* plurality. See *Sabbath, supra.*

time, absent exigent circumstances (*id.* at § 120.6(3)(b)). It is there explained that the requirement of probable cause for a daytime arrest provides ample protection to the legitimate interests of the individual. "To go further and require a warrant or a showing of necessity before police may make a felony arrest on private property even in daytime seems unduly restrictive." (*Id.* at 146.)

The California Supreme Court in the instant case, as well as several other courts which have recently decided this question contrary to our position,[3] have stressed a concern for symmetry between the law of search and seizure and the law of arrest. It is usually reasoned that the law should provide at least as much protection for the person of an individual as is provided his possessions. It is submitted, however, that there are important distinctions between the two concepts which were recognized during the development of the common law, by the framers of the Fourth Amendment, by modern legislatures, and by most courts today. In the last analysis, reasonableness, not the presence or absence of a warrant, is the test. The question is not whether it would have been reasonable

[3] See, e.g., *Dorman* v. *United States*, 435 F.2d 385 (D.C. Cir. 1970); *Vance* v. *North Carolina*, 432 F.2d 984 (4th Cir. (1970); *United States* v. *Shye*, 492 F.2d 886 (6th Cir. 1974); *United States* v. *Phillips*, 497 F.2d 1131 (9th Cir. 1974); *Commonwealth* v. *Forde*, 329 N.E.2d 717 (Mass. 1975).

to get a warrant, but whether the official action was reasonable. *Cooper* v. *California*, 386 U.S. 58 (1967); *United States* v. *Edwards*, 415 U.S. 800 (1974).

The interest of law enforcement in apprehending felons, preventing escape, protecting possible future victims and preventing the possible destruction of evidence weighs heavier than the seizure of mere evidence of a crime. Persons are inherently mobile while things are not. Moreover, entries to make arrests are, generally, less, not more, intrusive than entries to search for things. Ordinarily, when officers arrive at a house for the purpose of arresting a particular individual, that individual will come to the door and accede to the officer's demand, and no entry into the premises will be required. A search, on the other hand, will necessarily require intrusion into the premises. Even if the individual sought attempts to hide, the scope of the search for his person will be far less intrusive than the typical search, since it will involve no rummaging through private papers, drawers, cupboards, medicine cabinets or the like.

To summarize, the distinctions which developed between the law of arrest and the law of search and seizure were not accidental. The different considerations were recognized and the standards of reasonableness which developed, though not identical, reflect those distinct considerations. In short, "reasonableness

for an arrest entry requires probable cause coupled with compliance with pertinent knock and notice statutes, while "reasonableness" for a search of a dwelling requires a warrant. The Supreme Court of California has relied on dicta in *Coolidge*[4] and other cases to arrive at an erroneous interpretation of the Fourth Amendment. Petition would urge this Court to correct such interpretation.

CONCLUSION

The California Supreme Court has interpreted the Fourth Amendment of the United States Constitution and article I, section 13, of the California Constitution to require arrest warrants for non-exigent arrests made within the home. Since the provisions of the two constitutions are virtually identical and the Court below relied completely on Fourth Amendment law, petitioner submits that the California Supreme Court's misconception of the Fourth Amendment is at the bottom of its decision herein. For the reasons discussed above, it is felt that the interpretation of the Fourth Amendment given below is in error. Petitioner respectfully urges, therefore, that the writ of certiorari be granted.

[4] Even if dicta could properly be relied upon, the *Coolidge* case is sufficiently distinguishable so as to be of no support to the Court below. Indeed, the very statement of the constitutional right suggested by the *Coolidge* plurality (that warrants are required to make an entry in the absence of exigent circumstances) demonstrates its inapplicabliity to cases like the present. (*Coolidge*, at 480.) The officers did not enter Ramey's residence *in search of him*; they simply followed him through the door. No "search" for him was necessary and none was conducted.

Respectfully submitted,
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APPENDIX A

SUPREME COURT
FILED
Feb. 25, 1976
G. E. BISHEL, *Clerk*

Deputy

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

THE PEOPLE, *Plaintiff and Respondent,* v. MICHAEL KENNETH RAMEY, *Defendant and Appellant.*	Crim. 18795 (Super. Ct. No. 44054)

Defendant was charged by information with possession of marijuana for sale, possession of amphetamines, and possession of a sawed-off shotgun. He pleaded not guilty and moved to suppress the evidence pursuant to Penal Code section 1538.5. The motion was granted in part and denied in part. Thereafter defendant negotiated a plea whereby he pleaded guilty to the lesser included offense of possession of marijuana (Health & Saf. Code, § 11357), and the prosecution dropped the remaining counts. Defendant now appeals, asserting as error the partial denial of his motion to suppress. (Pen. Code, § 1538.5, subd. (m).)

On July 30, 1973, the residence of one James Turner of Sacramento was burglarized. Among the items taken were several firearms, one of which was

a distinctive weapon, a .38 caliber Smith & Wesson Airweight. Turner immediately reported the burglary to the Sacramento police.

Turner, who was a licensed private investigator and former security guard, also decided to investigate his own case. His inquiries led him to two individuals, Reed and Weaver. Reed informed Turner that defendant Ramey had purchased the stolen weapon from Weaver. Turner was slightly acquainted with defendant, and decided to confront him about the stolen weapon.

On the afternoon of August 17, 1973, Turner went to defendant's home. Defendant first told Turner he had been offered the stolen weapon but had not purchased it. Turner insisted he had heard that defendant had bought the Airweight. Defendant responded, "oh, that one," and said he had not known it was Turner's.[1] Defendant then admitted he had owned it briefly but said he had sold it to "some white guy." When pressed for details, defendant could not supply any further information concerning the purchaser. Turner considered defendant's manner and responses evasive and believed he was still in possession of the stolen weapon.

Turner again contacted the Sacramento police and spoke to Detective Joel Garcia. He related to Garcia the chain of events leading him to defendant's residence and his suspicion aroused by his conversation with defendant. Garcia concluded from Turner's information that there was probable cause to arrest

[1] Some time later, defendant's brother entered the room and defendant said, "Remember that .38 we just got rid of? It belonged to him [indicating Turner]."

defendant for the offense of receiving stolen property.[2]

After a delay of some three hours, Garcia and six other officers proceeded to defendant's residence to effect the arrest of defendant and his roommate. As is the standard departmental practice, Garcia did not secure an arrest warrant prior to the prospective arrest.[3]

Upon arriving at the apartment the officers drew their service revolvers and knocked. Defendant opened the door, and the officers identified themselves and displayed their badges. Defendant backed away towards a portable bar in the living room. The police followed him in, and when defendant was seen to reach behind the bar one of the officers grasped his arm and placed him under arrest. Detective Garcia looked behind the bar and found a .45 caliber pistol, three "lids" of marijuana in cellophane baggies, and a baggie containing tablets appearing to be benzedrine. The officers then seized other marijuana in plain view.

[2] Turner also told Garcia that while he was in the Ramey apartment another occupant brought out two handguns; there was no indication, however, that the guns were other than lawfully possessed. In addition, Turner said he saw some marijuana in the living room, but Garcia did not believe there was probable cause to arrest for a narcotics violation because there was no showing that Turner was experienced in the field of narcotics identification.

[3] In response to a question by defense counsel as to whether there had been any attempt to obtain an arrest warrant, Garcia testified: "That is not our practice in burglary. We just go out there and arrest the people when they're readily available. If they're not available, then we'll submit for an arrest warrant and put [it] on the NCIC computer so they can arrest in Fresno or wherever they are."

After placing defendant and his roommate under arrest the police searched the entire premises, discovering additional contraband. None of the items found, however, related to the Turner burglary. At the section 1538.5 hearing only those items of evidence seized in the living room were ruled admissible; the remainder was ordered suppressed under the rule of Chimel v. California (1969) 395 U.S. 752.

Defendant attacks the validity of the seizure on the ground that the arrest itself was unlawful, thereby vitiating any claim that the search was conducted incident to a valid arrest. He charges illegality on two alternate theories. First, it is urged that Turner was an untested informant whose credibility had not been established and whose information thus could not furnish probable cause to arrest. Secondly, it is contended that even if there was probable cause the arrest was nevertheless invalid because article I, section 13, of the California Constitution and the Fourth Amendment to the federal Constitution require that in the absence of exigent circumstances a warrant must be obtained prior to an intrusion into the home for the purpose of effecting an arrest.

I

The issue of probable cause turns on the facts known to Detective Garcia prior to the arrest. Here the sole source of that knowledge was the information related to Garcia by Turner. The question is whether it was reasonable for Garcia to rely on that information.

The courts have recognized a distinction between informers who are virtual agents of the police and

"citizen informants" who are chance witnesses to or victims of crime. The former are often criminally disposed or implicated, and supply their "tips" to the authorities on a recurring basis, in secret, and for pecuniary or other personal gain. The latter are innocent of criminal involvement, and volunteer their information fortuitously, openly, and through motives of good citizenship. (See generally People v. Schulle (1975) 51 Cal.App.3d 809, 814–815, and cases cited.) Because of these characteristics, the requisite showing of reliability in the case of a citizen informant is significantly less than that demanded of a police informer. (People v. Duren (1973) 9 Cal.3d 218, 240; Krauss v. Superior Court (1971) 5 Cal.3d 418, 421–422, and cases cited.)

It may therefore be stated as a general proposition that private citizens who are witnesses to or victims of a criminal act, absent some circumstance that would cast doubt upon their information, should be considered reliable. This does not, of course, dispense with the requirement that the informant—whether citizen or otherwise—furnish underlying facts sufficiently detailed to cause a reasonable person to believe that a crime had been committed and the named suspect was the perpetrator; and the rule also presupposes that the police be aware of the identity of the person providing the information and of his status as a true citizen informant. (People v. Abbott (1970) 3 Cal. App.3d 966, 970–971.) In short, probable cause will not be provided by conclusionary information or anonymous informants, but neither a previous demonstration of reliability nor subsequent corroboration is ordinarily necessary when witnesses to or victims of

criminal activities report their observations in detail to the authorities.[4]

In the present case Detective Garcia could reasonably believe that Turner was a citizen informant as herein defined. Moreover, an additional demonstration of reliability was presented in Turner's ongoing relationship with the Sacramento police: while his occupation would not of itself cloak him with any presumption of credence, there was evidence that he had dealt with the Sacramento police on other occasions without raising doubts as to his trustworthiness. For all these reasons, Detective Garcia could accept as true Turner's representations as to the circumstances which led him to defendant's residence, and the statements which defendant there made.

Having established that Turner was a reliable informant, we consider the remaining question whether the information he supplied was sufficient to constitute probable cause to believe defendant guilty of the crime of receiving stolen property.

Defendant contends the information given to Garcia consisted mainly of Turner's mere speculation that defendant was still in possession of the stolen Airweight. However, Garcia testified that he believed there was probable cause to arrest defendant for the offense of *receiving* stolen property, a crime which does not necessitate continuing possession of the goods. (Pen. Code, § 496, subd. 1.)

With regard to this offense there was ample showing to support a conclusion of probable cause. The key

[4] To the extent that People v. Legard (1970) 12 Cal.App.3d 1006, 1010, implies a stricter standard for judging the reliability of a citizen informant, it is disapproved. (See People v. Schulle (1975) supra, 51 Cal.App.3d 809, 816 & fn. 2.)

evidence, of course, was defendant's own admission to Turner that he had purchased the weapon and had actually "received" it. After this admission the only element of the offense still open to question was defendant's subjective knowledge that the weapon was stolen. This is an element which must be inferred from the circumstances. As we recently stated in People v. Martin (1973) 9 Cal.3d 687, 696, "Possession of a stolen item in and of itself is a factor which could assist a reasonable person in formulating a strong suspicion that the recipient knew the item was stolen." In addition, defendant apparently came into possession of the gun shortly after the burglary; he did not disclose to Turner the identity of the person from whom he had purchased it; and he conceded that he quickly "got rid of" the gun by selling it to an apparent stranger. Taken together, these circumstances supported an inference of guilty knowledge. Detective Garcia therefore had probable cause to arrest defendant for the crime of receiving stolen property.

II

But this determination does not end our inquiry. Defendant further contends that even if there was probable cause, the arrest was invalid because of the failure of the police to secure an arrest warrant prior to intruding into the privacy of his home. It is urged that just as warrantless searches of a private dwelling are unreasonable per se in the absence of one of a small number of carefully circumscribed exceptions (Vale v. Louisiana (1970) 399 U.S. 30, 34–35, and cases cited), so too are warrantless arrests within the home unreasonable unless there are exigent circum-

stances sufficient to justify dispensing with the warrant requirement. The People respond that in California an arrest without a warrant may be made whenever the police have reasonable cause to believe the suspect has committed a felony (Pen. Code, § 836), and that the only condition precedent to an arrest within the home is that the police comply with the statutory "knock and notice" provision (Pen. Code, § 844). Defendant recognizes that no statute imposes the requirement he now asks us to adopt, but asserts that the legislative silence on the matter is overridden by the demands of the Constitution.

Our analysis proceeds from the premise that the proscriptions of unreasonable searches and seizures contained in article I, section 13, of the California Constitution and the Fourth Amendment to the United States Constitution embrace seizures of the person as well as seizures of property. The authority for this proposition appears first in the language of the Constitution itself. In pertinent part article I, section 13, of the California Constitution forbids any violation of "The right of the people to be secure in their persons, [and] houses, . . . against unreasonable seizures," and declares that no warrant shall issue except on probable cause particularly describing "the persons . . . to be seized." The Fourth Amendment uses similar wording.

The United States Supreme Court has not yet resolved the issue of whether the Fourth Amendment requires a warrant for arrests within the home. However, in Coolidge v. New Hampshire (1971) 403 U.S. 443, five members of the court expressed agreement with the proposition that "It is clear, then, that the notion that the warrantless entry of a man's house in order to arrest him on probable cause is *per se* legiti-

mate is in fundamental conflict with the basic principle of Fourth Amendment law that searches and seizures inside a man's house without warrant are *per se* unreasonable in the absence of some one of a number of well defined 'exigent circumstances.' " (*Id.* at pp. 477–478.) Rejecting Justice White's dissenting views on this point, the majority observed (at p. 480) that "If we were to agree with Mr. Justice White that the police may, whenever they have probable cause, make a warrantless entry for the purpose of making an arrest, . . . then by the same logic *any* search or seizure could be carried out without a warrant, and we would simply have read the Fourth Amendment out of the Constitution. Indeed, if Mr. Justice White is correct that it has generally been assumed that the Fourth Amendment is not violated by the warrantless entry of a man's house for purposes of arrest, it might be wise to re-examine the assumption. Such a re-examination 'would confront us with a grave constitutional question, namely, whether the forceful nighttime entry into a dwelling to arrest a person reasonably believed within, upon probable cause that he had committed a felony, under circumstances where no reason appears why an arrest warrant could not have been sought, is consistent with the Fourth Amendment.' Jones v. United States, 357 U.S., at 499–500 [per Harlan, J.]." (Italics in original.)

As additional authority the majority pointed to the case of Warden v. Hayden (1967) 387 U.S. 294: that decision, "where the Court elaborated a 'hot pursuit' justification for the police entry into the defendant's house without a warrant for his arrest, certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent

circumstances. See also Davis v. Mississippi, 394 U.S. 721, 728; Wong Sun v. United States, 371 U.S., at 481–482." (*Id.* at pp. 480–481.) Citing Dorman v. United States (1970) 435 F.2d 385, the majority also noted (at p. 481) that "The Court of Appeals for the District of Columbia Circuit, sitting *en banc,* has unanimously reached the same conclusion."

In the circumstances of *Coolidge,* however, the court found it unnecessary to decide the issue, holding (*ibid.*) that the warrant requirement for searches "is not so frail that its continuing vitality depends on the fate of a *supposed* doctrine of warrantless arrest." (Italics added.) Since *Coolidge,* the point has not been squarely adjudicated. (See, e.g., United States v. Watson (1976) ____ U.S. ____, ____, fn. 6.)*

Our own cases, although frequently referring to the statutory formula for making warrantless arrests (see, e.g., People v. Fein (1971) 4 Cal.3d 747, 752), have never truly confronted the issue of the constitutionality of warrantless arrests in the home. Defendant relies heavily on language in People v. Privett (1961) 55 Cal.2d 698, 703, where we stated: "The sanctity of a private home is not only guaranteed by the Constitutions of the United States and of our own state, but it is traditional in our Anglo-Saxon heritage. 'A man's home is his castle' is, and should be, more than an empty phrase. The Constitutions themselves point to the proper procedure to be followed in invading this precious sanctity. . . . There was no emergency in this case which would have prevented the officers from seeking a warrant from a magistrate to enter this home. . . . Although a private home may

* 44 U.S.L. Week 4112, 4114, footnote 6.

be broken into without a warrant, even in the nighttime, if probable cause exists, in doubtful cases the householder should be entitled to have the protection of the independent judgment of a magistrate before the constitutionally guaranteed sanctity of his home is invaded." But this language, like that in *Coolidge,* was dictum; and while persuasive, it does not definitively resolve the constitutional question.

Nevertheless, a number of federal and state appellate courts have been squarely presented with the issue, and have rendered decisions in conformity with the sentiments expressed in *Coolidge* and *Privett.* First, as the Supreme Court noted in its *Coolidge* opinion, the Court of Appeals for the District of Columbia Circuit, sitting en banc, unanimously held that in the absence of a true emergency a warrantless entry into a home to arrest a suspect violates the Fourth Amendment. (Dorman v. United States (1970) supra, 435 F.2d 385.) The court reasoned that "The Fourth Amendment protects a right of privacy. This is a right that is increasingly recognized in decisions involving this and other provisions of the Constitution as a core protection safeguarding all citizens against unwarranted intrusions by police and other government officials.

"The Fourth Amendment provides protection even as to arrest in a public place, though in such cases the requirement is only that there be probable cause and there is no additional requirement of recourse to a warrant. A greater burden is placed, however, on officials who enter a home or dwelling without consent. Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the

Fourth Amendment. In general a home may not be searched without a warrant notwithstanding probable cause." (Fns. omitted.) (*Id.* at p. 389.) Reviewing a number of Supreme Court decisions, the court concluded that "the requirement of a warrant may be excused where circumstances do not tolerate delay, like that incident to obtaining a warrant, of an officer making an arrest. But the basic principle, the constitutional safeguard that, with room for exceptions, assures citizens the privacy and security of their homes unless a judicial officer determines that it must be overridden, is applicable not only in case of entry to search for property, *but also in case of entry in order to arrest a suspect.*" (Italics added.) (*Id.* at p. 390.)

Identical views have been expressed by other federal appellate courts. In Vance v. North Carolina (1970) 432 F.2d 984, the Court of Appeals for the Fourth Circuit impliedly adopted the position in *Dorman* that "an arrest inside a dwelling without a warrant, or pursuant to an invalid warrant, is *per se* unreasonable under the fourth amendment unless there are 'exigent circumstances' justifying the police in bypassing a magistrate. . . ." (*Id.* at p. 990.) Similarly, in United States v. Shye (1974) 492 F.2d 886, the Court of Appeals for the Sixth Circuit applied as the rule of *Dorman* the principle that "the warrantless entry of a dwelling to arrest [is] put on the same constitutional footing as warrantless entry of a dwelling for a search. *See:* Coolidge v. New Hampshire, 403 U.S. 443, at 454–455. . . . Entry in both instances is *per se* unreasonable unless 'exigent circumstances' justify the failure to obtain the warrant." (*Id.* at p. 891.) Again, in United States v. Phillips (1974) 497 F.2d 1131, 1135, the Court of Appeals for the Ninth Circuit cited *Dorman* for the proposition that "The constitutional safeguard that assures citizens the privacy and security of their homes unless a judicial officer determines that it must be overridden, is applicable not only in case of entry to search for property, but also in cases of entry to arrest a suspect." (See also Salvadore v. United States (8th Cir. 1974) 505 F.2d 1348, 1351–1352.)

The most recent state court decision recognizing that the warrant requirement applies to arrests within the home was rendered by the Supreme Court of Massachusetts. (Commonwealth v. Forde (1975) 329 N.E.2d 717.) Prior to *Forde* the law in Massachusetts permitted police officers to conduct warrantless arrests in homes on probable cause alone. (Commonwealth v. Phelps (1911) 95 N.E. 868, 873.) Relying on the above-quoted dictum of *Coolidge* (403 U.S. at pp. 477–478), the Massachusetts court reasoned that "The right of police officers to enter into a home, for whatever purpose, represents a serious governmental intrusion into one's privacy. It was just this sort of intrusion that the Fourth Amendment was designed to circumscribe by the general requirement of a judicial determination of probable cause. [Citations.] The distinction between an entry to search and an entry to arrest is slight, for the latter may well be characterized as simply a search for a person rather than a search for things. [Citations.] Moreover, it can be argued that an entry to arrest is a far greater intrusion than an entry to search. Coolidge v. New Hampshire, supra, 403 U.S. at 479–480, 91 S.Ct. 2022. The exigencies which would excuse the lack of an arrest

warrant may differ from those supplying the excuse for the lack of a search warrant. In any event, the police are required to demonstrate that exigency. In short, we believe that the Fourth Amendment prohibits a warrantless entry into a dwelling to arrest in the absence of sufficient justification for the failure to obtain a warrant.[5] While this conclusion departs from the old law of the Commonwealth, the same result has been reached by nearly every court to address the issue in recent years. [Citations.]" (*Id.* at pp. 722–723.)

Our own view of the matter comports with the *Coolidge* dictum and the opinions in the above-cited state and federal cases. An intrusion by the state into the privacy of the home for any purpose is one of the most awesome incursions of police power into the life of the individual. Unrestricted authority in this area is anathema to the system of checks envisaged by the Constitution. It is essential that the dispassionate judgment of a magistrate, an official dissociated from the "competitive enterprise of ferreting out crime" (Johnson v. United States (1947) 333 U.S. 10, 14), be interposed between the state and the citizen at this critical juncture. The frightening experience of certain foreign nations with the unexpected invasion of private homes by uniformed authority to seize individuals therein, often in the dead of night, is too fresh in memory to permit this portentous power to

[5] In a footnote at this point the court specified that "Our holding does not imply that warrantless arrests in general must be justified by exigent circumstances excusing the lack of a warrant but, rather, is limited to warrantless entries of dwellings for the purpose of making arrests within those dwellings." (329 N.E.2d at p. 722, fn. 3.) Our holding herein is likewise limited.

be left to the uninhibited discretion of the police alone.[6]

Moreover, it is incongruous to pay homage to the considerable body of law that has developed to protect an individual's belongings from unreasonable search and seizure in his home, and at the same time assert that identical considerations do not operate to safeguard the individual himself in the same setting. Where genuine exigencies exist, broad constitutional mandates often give way to the necessity for immediate action, and an arrest is no exception to this rule. But in the absence of a bona fide emergency, or consent to enter, police action in seizing the individual in the home must be preceded by the judicial authorization of an arrest warrant.

For the foregoing reasons we hold that the protection of article I, section 13, of the California Constitution and the Fourth Amendment of the federal Constitution against violation of the right of the people to be secure in their persons and houses against unreasonable seizures applies to arrests within the home, and that warrantless arrests within the home are per se unreasonable in the absence of exigent circumstances.[7]

[6] As Justice Jackson warned not long after his experience as prosecutor at the Nuremberg trials, "Essential freedoms are today threatened from without and within. It may become difficult to preserve here what a large part of the world has lost. . . ." (Kunz v. New York (1951) 340 U.S. 290, 295 (dissenting opn.).)

[7] Insofar as it is to the contrary, People v. Williams (1971) 17 Cal.App.3d 554, 561–562, is disapproved.

We recognize that numerous prior decisions of this court and the California Courts of Appeal have assumed the legality of a warrantless entry into a home to make a felony arrest in the absence of exigent circumstances, providing there is probable cause. Accordingly, except as to the defendant in the case at bar, the rule we now adopt will apply only to arrests made after this opinion becomes final.

The remaining issue is whether there were exigent circumstances justifying the warrantless arrest in the present case. In this context, "exigent circumstances" means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.

In the case at bar it is clear there was no imminent danger to life or property, and no likelihood of flight or destruction of evidence. Defendant was arrested for the offense of receiving stolen property, a nonviolent crime evidencing no propensity for endangering life. While it is true the stolen article was a firearm, there was no reason for Detective Garcia to assume the weapon was available for immediate use; on the contrary, according to Garcia's information the weapon had been sold and was no longer in defendant's possession. The other firearms said to be in defendant's apartment had been freely shown to Turner. Detective Garcia had no ground for inferring they were illegally possessed or presented an imminent danger to life.

Thus the information on which Garcia acted tended to show only that defendant had once received an item of stolen property, was probably no longer in possession of that item, and from all appearances was not likely to be fleeing the jurisdiction. In addition, a delay of some three hours occurred between the time the information was given to Garcia and the arrest in defendant's home, during which period no effort whatever was made to obtain a warrant. The delay took

place in the middle of a weekday afternoon, while magistrates were readily available for issuance of warrants. In Commonwealth v. Forde (Mass. 1975) supra, 329 N.E.2d 717, an identical three-hour opportunity to obtain an arrest warrant occurred at night, yet the court nevertheless relied on it in part in rejecting a claim of emergency: "It is impossible to find one's way around the delay of three hours in seeking the warrants. In the face of this delay the possible warning of the defendant which most likely would have been directed toward the destruction of evidence rather than his escape does not achieve the level of an exigency."

Because the contraband which formed the basis of the conviction was thus seized incident to an invalid arrest, the trial court erred in failing to grant the motion to suppress in its entirety.

The judgment is reversed.

MOSK, J.

WE CONCUR:
WRIGHT, C. J.
TOBRINER, J.
SULLIVAN, J.
RICHARDSON, J.

COPY

PEOPLE v. RAMEY
Crim. 18795

DISSENTING OPINION BY CLARK, J.

Our deference toward the United States Supreme Court is fast becoming a shell game. Opinions not commanding a majority of that court are held controlling: authoritative opinions adhered to by a majority of the court are rejected. In reliance on mere dictum in the plurality opinion in Coolidge v. New Hampshire (1971) 403 U.S. 443, the majority interpret the search and seizure clauses of the federal and California Constitutions to prohibit warrantless arrests within the home in the absence of an emergency, overturning "numerous prior decisions of this court and the California Courts of Appeal." (*Ante*, p. ____, fn. 7.*) By contrast, when the United States Supreme Court authoritatively construed the Fourth Amendment to permit full body search of a person subjected to custodial arrest, regardless of his offense or whether he is ultimately to be incarcerated (United States v. Robinson (1973) 414 U.S. 218; Gustafson v. Florida (1973) 414 U.S. 260), a majority of this court nevertheless interpreted virtually identical language in the California Constitution to impose a "more exacting standard." (People v. Brisendine (1975) 13 Cal.3d 528; People v. Norman (1975) 14 Cal.3d 929.) To give but one more example, when the United States Supreme Court authoritatively construed the Fifth Amendment to permit impeachment of a defendant with his extrajudicial statements obtained in violation of Miranda v. Arizona (1966) 384 U.S. 436 (Harris v. New York (1971) 401 U.S. 222), the same majority of this court nevertheless interpreted virtually identical language in the California Constitution to prohibit such impeachment. (People v. Disbrow (1976) ____ Cal.3d ____.)

* This appendix, page 35, footnote 7.

Today, because it happens to coincide with their own view, the majority resort to mere dictum in the plurality opinion in Coolidge v. New Hampshire, *supra*. However, as will be explained below, when they disagreed with another aspect of the same opinion, a majority of this court rejected it noting that the issue had been considered by an equally divided court, "and hence was not actually *decided*." (People v. McKinnon (1972) 7 Cal.3d 899, 911, italics in the original.) Moreover, contrary to the representation made by the majority, the dictum upon which they now rely was *not* joined by five members of the high court. It appears in Part II D of the opinion prepared for the court by Justice Stewart and signed by Justices Douglas, Brennan and Marshall. Justice Harlan concurred in the judgment and in Parts I, II D, and III of that opinion; however, his concurring opinion made it clear that he expressed no view on the question before us.[1] Furthermore, the dictum

[1] "Recent scholarship has suggested that in emphasizing the warrant requirement over the reasonableness of the search the Court has 'stood the fourth amendment on its head' from a historical standpoint. T. Taylor, Two Studies in Constitutional Interpretation 23–24 (1969). This issue is perhaps most clearly presented in the case of a warrantless entry into a man's home to arrest him on probable cause. The validity of such entry was left open in Jones v. United States, 357 U.S. 493, 499–500 (1958), and although my Brothers White and Stewart both feel that their contrary assumptions on this point are at the root of their disagreement in this case . . . the Court again leaves the issue open. . . . In my opinion it does well to do so. This matter should not be decided in a state case not squarely presenting the issue and where it was not fully briefed and argued. *I intimate no view on this subject*, but until it is ripe for decision, I hope in a federal case, I am unwilling to lend my support to setting back the trend of our recent decisions." (403 U.S. at p. 492 (Harlan, J., concurring), italics added.)

in the plurality opinion no longer expresses the view of even four members of the court, Justice Douglas having retired in the interim.[2]

Actually, rather than supporting the majority's position, the reasoning of the plurality opinion in *Coolidge* supports the conclusion that, because of the ever-present danger of escape arising from man's characteristic "mobility," entry into a residence to effect a probable cause arrest need not be delayed until a warrant is obtained.

In *Coolidge,* the court considered the scope of the "automobile exception" to the general rule that probable cause to believe contraband will be found concealed in certain property does not justify a warrantless search that is neither consensual nor incidental to a lawful arrest, absent an emergency. The ground for this exception was reiterated in Chambers v. Maroney (1970) 399 U.S. 42, 51: "*Carroll* [v. United States (1925) 267 U.S. 132] holds a search warrant unnecessary where there is probable cause to search an automobile stopped on a highway; the car is movable, the occupants are alerted, and the

[2] The reliability of the dictum was further undercut recently by United States v. Watson (1976) ___ U.S. ___, 44 U.S.L. Week 4112. In *Watson*, the court held that the Fourth Amendment permits a police officer to make a warrantless felony arrest in a public place even though the officer has an adequate opportunity to obtain a warrant after developing probable cause for arrest. *Watson* did not present the question whether warrantless probable cause arrests within the home are permissible in the absence of an emergency. (44 U.S.L.Week at pp. 4114, fn. 6, 4116 (Stewart, J., concurring in the result), 4118 (Powell, J., concurring).) However, as the dissent pointed out, the reasoning of the *Watson* majority strongly suggests that the high court will eventually resolve this question in favor of the constitutionality of such arrests. (See 44 U.S.L.Week at p. 4125 (Marshall, J., dissenting).)

car's contents may never be found again if a warrant must be obtained. Hence an immediate search is constitutionally permissible."

In Chambers v. Maroney, *supra*, police stopped a vehicle based on eyewitness descriptions of robbers and their getaway car. The occupants were arrested, but the car was not searched at the scene. Instead, it was driven to the police station where a later search revealed weapons and incriminating evidence hidden under the dashboard. Affirming a denial of federal habeas corpus after convictions of robbery, the high court that a search—reasonable at the time and place the car was stopped—does not become unreasonable because conducted later at the police station.

In *Coolidge*, after arresting a murder suspect in his home, police seized his automobile and searched it later at the police station, finding evidence that the victim had been inside the vehicle. The members of the court signing the plurality opinion found the automobile exception to the warrant requirement inapplicable because there was no real danger that the vehicle would be moved before a search warrant could be obtained. The murder suspect had been arrested. His wife, the only other adult occupant of the house had been informed by the police that she had to spend the rest of the night elsewhere and that she could not use the car. Two policemen then drove her to the house of a relative in another town, and they stayed with her until midnight, long after the car had been towed to the police station. In the interim, the car had been parked in the driveway of the Coolidge residence, which was guarded throughout the night by two policemen.

In People v. McKinnon noted above, this court declined to follow the portion of the *Coolidge* plurality opinion "which purports to narrow the *Carroll-Chambers* rule." (7 Cal.3d at p. 911.) In *McKinnon,* this court held that a chattel consigned to a common carrier for shipment may lawfully be searched upon probable cause to believe it contains contraband. In People v. McGrew, 1969) 1 Cal.3d 404, this court had reached the opposite conclusion on the ground that, the chattels being in the custody of the airlines and the airlines being under no obligation to ship them before a search warrant could be obtained, there was no likehood that the chattels would be removed or the contraband contained therein destroyed. The officers having had time to obtain a search warrant but having failed to do so, their search of the chattels was ipso facto "unreasonable" within the meaning of the Fourth Amendment. Noting that the intervening *Chambers* decision had rejected the same line of reasoning in the context of an automobile search, the *McKinnon* court declined to adhere to *McGrew*, concluding that chattels consigned to a common carrier are no less movable than vehicles and that they are therefore subject to the same exception to the search warrant requirement.

In his dissenting opinion, Justice Peters argued that *Coolidge* foreclosed application of the *Carroll-Chambers* rule in the circumstances of *McKinnon.* Anticipating the argument, the majority first distinguished *Coolidge,* then stated that—four justices having signed the opinion of the court in *Coolidge,* one justice (Harlan) having concurred in the judgment but having declined to join the pertinent part

of the plurality opinion, and the remaining four justices having expressly disagreed with that portion of the plurality opinion—"It follows that the *Carroll-Chambers* issue raised by the plurality opinion in *Coolidge* was in fact considered by an equally divided court, and hence was not actually *decided:* under settled doctrine, the judgment of an equally divided United States Supreme Court 'is without force as precedent.' " (People v. McKinnon, *supra,* 7 Cal.3d at p. 911.) In People v. Laursen (1972) 8 Cal.3d 192, relying on *Chambers* and refusing to follow *Coolidge* for the reasons stated in *McKinnon,* this court upheld the warrantless search of an automobile abandoned by robbers and transported to the police impound garage where it was searched hours later.

The point of this extended discussion is that the majority's position is anomalous in the extreme. On the one hand, they hold that an automobile's characteristic mobility justifies a warrantless search even if, as a practical matter, delaying the search to obtain a warrant would entail no risk because the vehicle is immobilized and secured by impoundment. On the other hand, they hold that police must not arrest a man in his home until a warrant is obtained even if, as here, the suspect is known to be armed and likely to flee, having just been visited by his victim and accused of the crime. An automobile is mobile only insofar as it is set in motion by a man. Nevertheless, in the circumstances of *Coolidge,* the majority would seize the car and allow the man to escape!

It is hoped that this anomaly does not spring from mistrust of a policeman's motives.[3] However, the ma-

[3] To condemn these good officers by associating their conduct with the tactics of totalitarian regimes—either past or present (see ante, p. _ _*)—is grossly unjust.

* This appendix, pages 34–35.

jority appear to assume that the police chose to arrest defendant in his home, rather than elsewhere, in order to search his residence and seize evidence of the crime. However, the record is to the contrary. This is not a case in which police, having numerous opportunities to arrest a suspect at other locations, wait until he returns home. Defendant just happened to be at home when the police first received information providing probable cause to arrest him. Moreover, had defendant not retreated into the living room in an apparent attempt to secure the weapon or destroy the contraband behind the bar, the arrest would have occurred at the door, restricting the scope of the incidental search to the area within defendant's reach. (Chimel v. California (1969) 395 U.S. 752.) Finally, it is settled that "when it appears that the search and not the arrest was the real object of the officers in entering upon the premises and that the arrest was a pretext for or at most an incident of the search, the search is not reasonable within the meaning of the Constitution." (People v. Edwards (1969) 71 Cal.2d 1096, 1110; see People v. Haven (1963) 59 Cal.2d 713, 719; see also Kaplan v. Superior Court (1971) 6 Cal.3d 150, 154.) The rule announced today is unneeded to curb this or any other abuse.

I would affirm the judgment.

CLARK, J.

I CONCUR:
McCOMB, J.

APPENDIX B

CERTIFIED FOR PUBLICATION

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IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE THIRD
APPELLATE DISTRICT

[Sacramento]

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent,* v. MICHAEL KENNETH RAMEY, *Defendant and Appellant.*	3 Crim. 7673 (Sup. Ct. No. 44054) April 30, 1975 FILED Court of Appeal— Third District WILFRED J. KRAMER, *Clerk* By ----------, *Deputy*

An information charged defendant with two narcotics offenses and possession of a sawed-off shotgun. After partial denial of defendant's motion to suppress, a plea bargain resulted in his plea of guilty to marijuana possession. He appeals under Penal Code section 1538.5(m), attacking denial of the suppression motion.

Marijuana and a loaded revolver were found in defendant's apartment when the police went there to arrest him without a warrant. The trial court refused to suppress these items (which were in defendant's immediate vicinity when he was arrested) but did suppress other items found in another room of the apartment.

A security guard named Turner was investigating the burglary of his home. Several guns had been taken. Turner gave the police descriptions and serial

numbers of the weapons. At 2 p.m. on a particular afternoon he telephoned the burglary division of the Sacramento Police Department and spoke to Officer Garcia, who had charge of the burglary investigation. He told Garcia that he had information that one of his guns (a .38 revolver) had been sold to defendant; that he had gone to defendant's apartment and asked him about the gun; that defendant admitted possessing the gun and, not knowing it was stolen, had sold it; that another person in the apartment showed Turner two handguns, both loaded. While Turner was in the apartment, defendant's brother entered. Officer Garcia knew the brother as a narcotics dealer. Turner told Garcia that he had seen a large quantity of marijuana in the living room of the apartment and several stereo sets as well.[1]

About three hours after his conversation with Turner, Garcia went to defendant's apartment with four or five detectives and two uniformed officers to arrest him for receiving stolen goods. He had neither an arrest nor a search warrant. When defendant opened the front door in response to Garcia's knock, Garcia identified himself and displayed his badge; a uniformed officer was standing behind him. Garcia had his pistol drawn. With the door still open, defendant started backing away in the direction of a portable bar which was located against a wall of the living room. Garcia and two other officers entered and followed defendant. As defendant was reaching behind

[1] Garcia testified that Turner had told him about the marijuana and stereo sets. Turner denied having told Garcia of these items. In this proceeding we view the evidence in the light most favorable to the trial court's disposition of the motion to suppress. (People v. Martin (1973) 9 Cal.3d 687, 692.)

the bar, one of the officers grasped his arm and placed him under arrest.

Garcia looked behind the portable bar and on a shelf found a loaded .45 caliber revolver, three cellophane baggies of marijuana, and a baggie containing approximately 50 pills which appeared to be benzedrine. Garcia, who had experience as a narcotics agent, also saw marijuana roaches in the ashtrays. Additionally, in the hole of a cement block used as a shelf support, he saw an eyeglass case with a baggie of marijuana protruding.

Officer Garcia testified that he considered Turner to be a reliable witness because Turner was a security officer and "a security officer holds more or less the same position as a police officer"; that Garcia previously had secured search warrants based on information from security officers; that Turner himself was a crime victim was another factor considered by Garcia.

Defendant argues that the uncorroborated information from Turner, an untested citizen-informer, was insufficient to provide probable cause for the arrest. He relies upon People v. Zimnicki (1972) 29 Cal. App.3d 577, 582. The present case is unlike *Zimnicki*, which involved information from an unidentified hitchhiker. Here the informant had added credibility because he was a crime victim. A person who is both a victim and a witness to the crime is presumptively reliable even though his reliability has not previously been tested. (People v. Hill (1974) 12 Cal.3d 731, 761.)

Where the trial court has found probable cause for a warrantless arrest, the appellate court will not set aside that finding if it is supported by substantial evidence. (People v. Levy (1971) 16 Cal.App.3d 327, 333.) Contrary to defendant's contention, there was

substantial evidence of probable cause for arrest, i.e., a reasonable and honest suspicion that defendant had committed a felony by receiving Turner's stolen revolver.

In his closing brief defendant asserts lack of compliance with Penal Code section 844. Although this is a new theory which we may disregard, it has no merit. The police did not indulge in an unannounced, surreptitious or forcible entry. They knocked on the door, defendant opened it and the officers identified themselves. Having information that there were several persons and several loaded guns in the apartment, Garcia acted reasonably by having his own pistol ready. When defendant started backing away into the living room, the officers could reasonably envision the possibility that he was about to secure a weapon and that a gun duel might ensue. Self-protection justified the officers in staying in close physical proximity to defendant and in following him into the apartment to assure themselves that he did not arm himself. The officers' failure to explain the purpose of their visit was excused by the necessity for preventing a violent confrontation. (People v. Peterson (1973) 9 Cal.3d 717, 723.) There was substantial compliance with Penal Code section 844.

Defendant charges that he did not consent to the officers' entry into his apartment but submitted to the entry at gunpoint. Neither consent nor submission was in issue. Neither the magistrate nor the superior court made an express or implied finding of consent. The officers entered the apartment in order to arrest defendant and in order to prevent him from arming himself.

In chronological terms, a separate issue precedes the emergency conditions which justified police entry

into the apartment—whether the police acted lawfully by going to defendant's home to make a warrantless felony arrest under non-exigent circumstances. At this point defendant relies upon the fact that approximately three hours elapsed between the time of Turner's telephone call to the police and the police expedition to defendant's apartment.

California decisions supply no firm answer to the question whether Fourth Amendment principles permit warrantless entry of a private home to make a felony arrest where the police have had time and opportunity to procure an arrest warrant. California statutes sanction the practice. Penal Code section 836, subdivision 3, authorizes police to make a warrantless arrest of a person reasonably suspected of a felony. When they believe the suspect is in a house, Penal Code section 844 permits them to break in after complying with the "knock and explanation" requirement.[2]

A number of California decisions directly or inferentially support the proposition that the police may make a warrantless arrest at the home of a person reasonably suspected of a felony, but these decisions do not inquire whether the police had time and opportunity to secure an arrest warrant. (E.g., People v. Hill, supra, 12 Cal.3d 757; People v. Terry (1970) 2 Cal.3d 362, 393; People v. Kellett (1969) 1 Cal.App.3d 704, 712–713.) In sustaining an outdoor arrest of a felony suspect, at least one court has held

[2] Evidence in the present case illustrates a police belief that the law dispenses with the necessity for a warrant for a felony arrest at the suspect's home. At the suppression hearing Officer Garcia was asked whether he had made any effort to secure an arrest warrant. He responded: "That is not our practice in burglary. We just go out and arrest the people when they're readily available."

that the opportunity to procure a warrant preceding the arrest does not affect the arrest's validity. (People v. Williams (1971) 17 Cal.App.3d 554, 562.)

On the other hand, there is a basis for the view that the Fourth Amendment's demand for the interposition of a neutral magistrate between the citizen and the police is just as stringent for an arrest as for a search; that a felony arrest and incidental search at the suspect's home require an arrest warrant except under exigent circumstances. (Coolidge v. New Hampshire (1971) 403 U.S. 443, 447, 480–481 [29 L.Ed.2d 564]; note, 23 Stan.L.Rev. 994; cf. Ker v. California (1963) 374 U.S. 23 [10 L.Ed.2d 726].) In Coolidge v. New Hampshire, supra, 403 U.S. at pages 477–478, the majority opinion states: "It is clear, then, that the notion that the warrantless entry of a man's house in order to arrest him on probable cause is per se legitimate is in fundamental conflict with the basic principle of Fourth Amendment law that seizures inside a man's house without warrant are per se unreasonable in the absence of some one of a number of well defined 'exigent circumstances.' "

In Warden v. Hayden (1967) 387 U.S. 294 [18 L.Ed.2d 782], the court sustained a search of the premises after the police had entered in hot pursuit of a fleeing robber. The *Hayden* case involved an exigent, wide-ranging search of the premises, not an arrest and incidental search of the confined area within the suspect's reach. Indeed, the court disclaimed any attempt to justify the search as an incident of the arrest. (*Id.* at p. 299.) Nevertheless, in Coolidge v. New Hampshire, supra, five members of the court expressed the view that Warden v. Hayden "certainly stands by negative implication for the proposition that an arrest warrant is required in the absence of exigent circumstances." (403 U.S. at pp. 480–481.)

At this point of his argument defendant relies on People v. Privett (1961) 55 Cal.2d 698, where officers staked out the home of a burglary suspect, knocked on the front door and, receiving no response, kicked in the door, arrested the suspect and searched the premises. In *Privett* the court invalidated the entry and search, holding that the officers had ample opportunity to secure a warrant; holding that the facts *before* the arrest did not tend to connect any occupant of the house with any reported or known felony; holding that forcible and warrantless entry of the defendant's home violated Fourth Amendment principles. Although the *Privett* opinion spoke of the constitutional sanctity of a private home, those observations were surplus to the decision, for the arrest and search did not even measure up to the demands of Penal Code section 836.

As we view the facts of this case, we need not enter this relatively obscure corner of search and seizure law. Here, unlike *Privett,* the officers had reasonable ground to suspect the occupant of a felony *before* they arrived at his home. Approximately three hours earlier they had been reliably informed that defendant and at least one other person in the apartment had loaded, possibly stolen, handguns. When police receive word of the whereabouts of felony suspects with loaded guns, they need not halt for the drafting of affidavits and the solicitation of warrants before moving into action. They need take no more time than reasonably necessary to mount an

expedition of sufficient size and power to accomplish their dangerous task effectively and safety. Officer Garcia testified that after receiving Turner's phone call he discussed the problem with his supervisor and "subsequently, around shortly after 5:00, we managed to get enough detectives together to go over to Mr. Ramey's residence." Appellate judges should not second-guess the police or indulge in refined conjectures when loaded guns in the hands of felony suspects threaten the public safety. The circumstances were sufficiently exigent to excuse what might otherwise be charged as an invasion of privacy. (See Terry v. Ohio (1968) 392 U.S. 1, 24–25 [20 L.Ed.2d 889]; Warden v. Hayden, supra, 387 U.S. at p. 298; Schmerber v. California (1966) 384 U.S. 757, 770–771 [16 L.Ed.2d 908]; cf. Vale v. Louisiana (1970) 399 U.S. 30, 35 [26 L.Ed.2d 409].)

Incidental to defendant's arrest, the officers could lawfully search an area within their immediate control, i.e., the area in which he might have ready access to weapons or evidence. (Chimel v. California (1969) 395 U.S. 752 [23 L.Ed.2d 685]; People v. Superior Court (Manfredo) (1971) 17 Cal.App.3d 195, 202.) The .45 caliber revolver, the marijuana and the pills found behind the portable bar, the marijuana baggie in the eyeglass case, could lawfully be seized either as an incident to the arrest or under the plain view doctrine.

Judgment affirmed. (CERTIFIED FOR PUBLICATION.)

FRIEDMAN, Acting P.J.

We concur:

REGAN, J.

JANES, J.

APPENDIX C

AMENDMENT IV

Seizures, Searches and Warrants

[SECTION 1.] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT XIV

Citizenship, Representation, and Payment of Public Debt

Citizenship

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE I

DECLARATION OF RIGHTS

[*Unreasonable Seizure and Search—Warrant*]

SEC. 13. The right of the people to be secure in their persons, houses, papers, and effects against un-

reasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. [New section adopted November 5, 1974.]

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